

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Residential Mortgage License Act of 1987 is  
5 amended by adding Sections 4-15, 4-16, 5-6, 5-7, 5-8, 5-9,  
6 5-10, 5-11, 5-12, 5-14, 5-15, 5-16, and 5-17 as follows:

7 (205 ILCS 635/4-15 new)

8 Sec. 4-15. Enforcement and reporting provisions.

9 (a) The Attorney General may enforce any violation of  
10 Section 5-6, 5-7, 5-8, 5-9, 5-10, 5-11, 5-12, 5-14, or 5-15 of  
11 this Act as an unlawful practice under the Consumer Fraud and  
12 Deceptive Business Practices Act.

13 (b) The Department of Financial and Professional  
14 Regulation and the Department of Financial Institutions must  
15 report to the Attorney General all violations of this  
16 amendatory Act of which they become aware.

17 (205 ILCS 635/4-16 new)

18 Sec. 4-16. Private right of action. A borrower injured by a  
19 violation of the standards, duties, prohibitions, or  
20 requirements of Sections 5-6, 5-7, 5-8, 5-9, 5-10, 5-11, 5-12,  
21 5-13, 5-14, 5-15, and 5-16 of this Act shall have a private  
22 right of action.

1       (a) A licensee is not liable for a violation of this Act  
2       if:

3               (1) within 30 days of the loan closing and prior to  
4       receiving any notice from the borrower of the violation,  
5       the licensee has made appropriate restitution to the  
6       borrower and appropriate adjustments are made to the loan;  
7       or

8               (2) the violation was not intentional and resulted from  
9       a bona fide error in fact, notwithstanding the maintenance  
10       of procedures reasonably adopted to avoid such errors, and  
11       within 60 days of the discovery of the violation and prior  
12       to receiving any notice from the borrower of the violation,  
13       the borrower is notified of the violation, appropriate  
14       restitution is made to the borrower, and appropriate  
15       adjustments are made to the loan.

16       (b) The remedies and rights provided for in this Act are  
17       not exclusive, but cumulative, and all other applicable claims  
18       are specifically preserved.

19       (205 ILCS 635/5-6 new)

20       Sec. 5-6. Verification of borrower's ability to repay.

21       (a) No licensee may make, provide, or arrange for a  
22       residential mortgage loan without verifying the borrower's  
23       reasonable ability to pay the principal and interest on the  
24       loan, real estate taxes, homeowner's insurance, assessments,  
25       and mortgage insurance premiums, if applicable.

1       For residential mortgage loans in which the interest rate  
2 may vary, the reasonable ability to pay the principal and  
3 interest on the loan shall be determined based on a fully  
4 indexed rate, which rate shall be calculated by using the index  
5 rate prevailing at the time of origination of the loan plus the  
6 margin that will apply when calculating the adjustable rate  
7 under the terms of the loan, assuming a fully amortizing  
8 repayment schedule based on the term of the loan.

9       For loans that allow for negative amortization, the  
10 principal amount of the loan shall be calculated by including  
11 the maximum amount the principal balance may increase due to  
12 negative amortization under the terms of the loan.

13       (b) For a residential mortgage loan made by a licensee, the  
14 borrower's income and financial resources must be verified by  
15 tax returns, payroll receipts, bank records, or other similarly  
16 reliable documents. Nothing in this Section shall be construed  
17 to limit a licensee's ability to rely on criteria other than  
18 the borrower's income and financial resources to establish the  
19 borrower's reasonable ability to repay a residential mortgage  
20 loan; however, such other criteria must be verified through  
21 reasonably reliable methods and documentation. A statement by  
22 the borrower to the licensee of the borrower's income and  
23 resources is not sufficient to establish the existence of the  
24 income or resources when verifying the reasonable ability to  
25 pay.

1 (205 ILCS 635/5-7 new)

2 Sec. 5-7. Broker agency relationship.

3 (a) A mortgage broker shall be considered to have created  
4 an agency relationship with the borrower in all cases and shall  
5 comply with the following duties:

6 (1) mortgage brokers shall act in the borrower's best  
7 interest and in the utmost good faith toward borrowers, and  
8 shall not compromise a borrower's right or interest in  
9 favor of another's right or interest, including a right or  
10 interest of the mortgage broker. A mortgage broker shall  
11 not accept, give, or charge any undisclosed compensation or  
12 realize any undisclosed remuneration, either through  
13 direct or indirect means, that inures to the benefit of the  
14 mortgage broker on an expenditure made for the borrower;

15 (2) mortgage brokers shall carry out all lawful  
16 instructions given by borrowers;

17 (3) mortgage brokers shall disclose to borrowers all  
18 material facts of which the mortgage broker has knowledge  
19 which might reasonably affect the borrower's rights,  
20 interests, or ability, or both, to receive the borrower's  
21 intended benefit from the residential mortgage loan, but  
22 not facts which are reasonably susceptible to the knowledge  
23 of the borrower;

24 (4) mortgage brokers shall use reasonable care in  
25 performing duties; and

26 (5) mortgage brokers shall account to a borrower for

1 all the borrower's money and property received as agent.

2 (b) Nothing in this Section prohibits a mortgage broker  
3 from contracting for or collecting a fee for services rendered  
4 and which had been disclosed to the borrower in advance of the  
5 provision of those services.

6 (c) Nothing in this Section requires a mortgage broker to  
7 obtain a loan containing terms or conditions not available to  
8 the mortgage broker in the mortgage broker's usual course of  
9 business, or to obtain a loan for the borrower from a mortgage  
10 lender with whom the mortgage broker does not have a business  
11 relationship.

12 (205 ILCS 635/5-8 new)

13 Sec. 5-8. Prepayment penalties.

14 (a) No licensee may make, provide, or arrange a mortgage  
15 loan with a prepayment penalty unless the licensee offers the  
16 borrower a loan without a prepayment penalty, the offer is in  
17 writing, and the borrower initials the offer to indicate that  
18 the borrower has declined the offer. In addition, the licensee  
19 must disclose the discount in rate received in consideration  
20 for a mortgage loan with the prepayment penalty.

21 (b) If a borrower declines an offer required under  
22 subsection (a) of this Section, the licensee may include a  
23 prepayment penalty that extends no longer than three years or  
24 the first change date or rate adjustment of a variable rate  
25 mortgage, whichever comes earlier, provided that, if a

1 prepayment is made during the fixed rate period, the licensee  
2 shall receive an amount that is no more than:

3 (1) 3% of the total loan amount if the prepayment is  
4 made within the first 12-month period following the date  
5 the loan was made;

6 (2) 2% of the total loan amount if the prepayment is  
7 made within the second 12-month period following the date  
8 the loan was made; or

9 (3) 1% of the total loan amount if the prepayment is  
10 made within the third 12-month period following the date  
11 the loan was made, if the fixed rate period extends 3  
12 years.

13 (c) Notwithstanding any provision in this Section,  
14 prepayment penalties are prohibited in connection with the sale  
15 or destruction of a dwelling secured by a residential mortgage  
16 loan.

17 (d) This Section applies to loans made, refinanced,  
18 renewed, extended, or modified on or after the effective date  
19 of this amendatory Act of the 95th General Assembly.

20 (205 ILCS 635/5-9 new)

21 Sec. 5-9. Notice of change in loan terms.

22 (a) No licensee may fail to do either of the following:

23 (1) Provide timely notice to the borrower of any  
24 material change in the terms of the residential mortgage  
25 loan prior to the closing of the loan. For purposes of this

1 Section, a "material change means" any of the following:

2 (A) A change in the type of loan being offered,  
3 such as a fixed or variable rate loan or a loan with a  
4 balloon payment.

5 (B) A change in the term of the loan, as reflected  
6 in the number of monthly payments due before a final  
7 payment is scheduled to be made.

8 (C) An increase in the interest rate of more than  
9 0.15%, or an equivalent increase in the amount of  
10 discount points charged.

11 (D) An increase in the regular monthly payment of  
12 principal and interest of more than 5%.

13 (E) A change regarding the requirement or amount of  
14 escrow of taxes or insurance.

15 (F) A change regarding the requirement or payment,  
16 or both, of private mortgage insurance.

17 (2) Timely inform the borrower if any fees payable by  
18 the borrower to the licensee increase by more than 10% or  
19 \$100, whichever is greater.

20 (b) The disclosures required by this Section shall be  
21 deemed timely if the licensee provides the borrower with the  
22 revised information not later than 3 days after learning of the  
23 change or 24 hours before the residential mortgage loan is  
24 closed, whichever is earlier. If the licensee discloses a  
25 material change more than the 3 days after learning of the  
26 change but still 24 hours before the residential mortgage loan

1 is closed, it will not be liable for penalties or forfeitures  
2 if the licensee cures in time for the borrower to avoid any  
3 damage.

4 (c) If an increase in the total amount of the fee to be  
5 paid by the borrower to the lender or broker is not disclosed  
6 in accordance with this Section, the lender or broker, whoever  
7 received the increased fee, shall refund to the borrower the  
8 amount by which the fee was increased. If the fee is financed  
9 into the residential mortgage loan, the lender or broker shall  
10 also refund to the borrower the interest charged to finance the  
11 fee.

12 (205 ILCS 635/5-10 new)

13 Sec. 5-10. Comparable monthly payment quotes. When  
14 comparing different loans, the licensee must not state or imply  
15 that monthly loan payments, if they include amounts escrowed  
16 for payment of property taxes and homeowner's insurance, are  
17 comparable with monthly loan payments that do not include these  
18 amounts.

19 (205 ILCS 635/5-11 new)

20 Sec. 5-11. Requirement to provide borrower with a copy of  
21 all appraisals. Licensees must provide to the borrower a  
22 complete copy of any appraisal, including any appraisal  
23 generated using the Automated Valuation Model, obtained by the  
24 lender for use in underwriting the residential mortgage loan

1 within 3 business days of receipt by the licensee, but in no  
2 event less than 24 hours prior to the day of closing. The  
3 appraisal may be sent via first class mail, commercial carrier,  
4 by facsimile or by e-mail, if the borrower has supplied an  
5 email address.

6 (205 ILCS 635/5-12 new)

7 Sec. 5-12. Disclosure of refinancing options. If the  
8 subject of a future loan is discussed by a licensee making,  
9 providing, or arranging a mortgage loan, the licensee shall  
10 disclose the circumstances under which a new loan could be  
11 considered. Such disclosure shall clearly state that it is not  
12 a contract and that the licensee is not representing or  
13 promising that a new loan could or would be made at any time in  
14 the future.

15 (205 ILCS 635/5-14 new)

16 Sec. 5-14. Prohibition on equity stripping and loan  
17 flipping. No licensee may engage in equity stripping or loan  
18 flipping, as those terms are defined in the Illinois Fairness  
19 in Lending Act.

20 (205 ILCS 635/5-15 new)

21 Sec. 5-15. Prohibition on financing certain insurance  
22 premiums. No licensee may make, provide, or arrange for a  
23 residential mortgage loan that finances, directly or

1 indirectly, any credit life, credit disability, or credit  
2 unemployment insurance; however, insurance premiums calculated  
3 and paid on a monthly basis shall not be considered to be  
4 financed by the lender.

5 (205 ILCS 635/5-16 new)

6 Sec. 5-16. Prohibition on encouraging default. A licensee  
7 may not recommend or encourage default or the failure to make  
8 timely payments on an existing residential mortgage loan or  
9 other debt prior to and in connection with the closing or  
10 planned closing of a residential mortgage loan that refinances  
11 all or any portion of the existing loan or debt.

12 (205 ILCS 635/5-17 new)

13 Sec. 5-17. Severability. If any provision of this Act or  
14 its application to any person or circumstance is held invalid,  
15 the invalidity of that provision or application does not affect  
16 other provisions or applications of this Act that can be given  
17 effect without the invalid provision or application.

18 Section 10. The Interest Act is amended by changing Section  
19 4.1a as follows:

20 (815 ILCS 205/4.1a) (from Ch. 17, par. 6406)

21 Sec. 4.1a. Charges for and cost of the following items paid  
22 or incurred by any lender in connection with any loan shall not

1 be deemed to be charges for or in connection with any loan of  
2 money referred to in Section 6 of this Act, or charges by the  
3 lender as a consideration for the loan referred to in this  
4 Section:

5 (a) hazard, mortgage or life insurance premiums,  
6 survey, credit report, title insurance, abstract and  
7 attorneys' fees, recording charges, escrow and appraisal  
8 fees, and similar charges.

9 (b) in the case of construction loans, in addition to  
10 the matters referred to in clause (a) above, the actual  
11 cost incurred by the lender for services for making  
12 physical inspections, processing payouts, examining and  
13 reviewing contractors' and subcontractors' sworn  
14 statements and waivers of lien and the like.

15 (c) in the case of any loan made pursuant to the  
16 provisions of the Emergency Home Purchase Assistance Act of  
17 1974 (Section 313 of the National Housing Act, Chapter B of  
18 Title 12 of the United States Code), in addition to the  
19 matters referred to in paragraphs (a) and (b) of this  
20 Section all charges required or allowed by the Government  
21 National Mortgage Association, whether designated as  
22 processing fees, commitment fees, loss reserve and  
23 marketing fees, discounts, origination fees or otherwise  
24 designated.

25 (d) in the case of a single payment loan, made for a  
26 period of 6 months or less, a regulated financial

1 institution or licensed lender may contract for and receive  
2 a maximum charge of \$15 in lieu of interest. Such charge  
3 may be collected when the loan is made, but only one such  
4 charge may be contracted for, received, or collected for  
5 any such loan, including any extension or renewal thereof.

6 (e) if the agreement governing the loan so provides, a  
7 charge not to exceed the rate permitted under Section 3-806  
8 of the Uniform Commercial Code-Commercial Paper for any  
9 check, draft or order for the payment of money submitted in  
10 accordance with said agreement which is unpaid or not  
11 honored by a bank or other depository institution.

12 (f) if the agreement governing the loan so provides,  
13 for each loan installment in default for a period of not  
14 less than 10 days, a charge in an amount not in excess of  
15 5% of such loan installment. Only one delinquency charge  
16 may be collected on any such loan installment regardless of  
17 the period during which it remains in default. Payments  
18 timely received by the lender under a written extension or  
19 deferral agreement shall not be subject to any delinquency  
20 charge.

21 Notwithstanding items (k) and (l) of subsection (1) of  
22 Section 4 of this Act, the lender, in the case of any nonexempt  
23 residential mortgage loan, as defined in Section 1-4 of the  
24 Residential Mortgage License Act of 1987, shall have the right  
25 to include a prepayment penalty that extends no longer than the  
26 fixed rate period of a variable rate mortgage provided that, if

1 a prepayment is made during the fixed rate period and not in  
2 connection with the sale or destruction of the dwelling  
3 securing the loan, the lender shall receive an amount that is  
4 no more than:

5 (1) 3% of the total loan amount if the prepayment is  
6 made within the first 12-month period following the date  
7 the loan was made;

8 (2) 2% of the total loan amount if the prepayment is  
9 made within the second 12-month period following the date  
10 the loan was made; or

11 (3) 1% of the total loan amount if the prepayment is  
12 made within the third 12-month period following the date  
13 the loan was made, if the fixed rate period extends 3  
14 years.

15 This subsection applies to loans made, refinanced,  
16 renewed, extended, or modified on or after the effective date  
17 of this amendatory Act of the 95th General Assembly.

18 Where there is a charge in addition to the stated rate of  
19 interest payable directly or indirectly by the borrower and  
20 imposed directly or indirectly by the lender as a consideration  
21 for the loan, or for or in connection with the loan of money,  
22 whether paid or payable by the borrower, the seller, or any  
23 other person on behalf of the borrower to the lender or to a  
24 third party, or for or in connection with the loan of money,  
25 other than as hereinabove in this Section provided, whether  
26 denominated "points," "service charge," "discount,"

1 "commission," or otherwise, and without regard to declining  
2 balances of principal which would result from any required or  
3 optional amortization of the principal of the loan, the rate of  
4 interest shall be calculated in the following manner:

5 The percentage of the principal amount of the loan  
6 represented by all of such charges shall first be computed,  
7 which in the case of a loan with an interest rate in excess of  
8 8% per annum secured by residential real estate, other than  
9 loans described in paragraphs (e) and (f) of Section 4, shall  
10 not exceed 3% of such principal amount. Said percentage shall  
11 then be divided by the number of years and fractions thereof of  
12 the period of the loan according to its stated maturity. The  
13 percentage thus obtained shall then be added to the percentage  
14 of the stated annual rate of interest.

15 ~~The borrower in the case of nonexempt loan shall have the~~  
16 ~~right to prepay the loan in whole or in part at any time, but,~~  
17 ~~except as may otherwise be provided by Section 4, the lender~~  
18 ~~may require payment of not more than 6 months' advance interest~~  
19 ~~on that part of the aggregate amount of all prepayments on a~~  
20 ~~loan in one year, which exceeds 20% of the original principal~~  
21 ~~amount of the loan.~~

22 (Source: P.A. 87-496.)